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IN THE

Supreme Court of the United States

October Term, 1974

No. 73-2012

SEATTLE TRUST & SAVINGS BANK, et al.,
Petitioners,
v.
THE BANK OF CALIFORNIA, N.A., and
THE COMPTROLLER OF THE CURRENCY,
Respondents.

BRIEF OF PETITIONERS IN REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTORY STATEMENT

This Reply Brief is filed by Petitioners (No. 73-2012) in response to certain arguments first raised in Respondents' Briefs in opposition to the petition for a writ of certiorari.

ARGUMENT

1. The Decision of the Court of Appeals Will Significantly Affect Banking Relationships in Oregon and Washington

Respondents argue that the interpretation of Section 36(c) of the National Banking Act (12 USC § 36(c)) by the Court of Appeals should be allowed to stand because

it has significance only for two national banks which are authorized to maintain banking offices in more than one state (Brief of The Bank of California, p. 4; Brief of Comptroller, p. 5). This contention obscures the fact that, apart from the broader ramifications discussed in the petition, the decision will certainly have a significant impact on banking and banking relationships in Oregon and Washington. A comparison of the size of The Bank of California with other banks located in Washington and Oregon provides an indication of the possible extent of this impact. Based on total deposits as of June 30, 1974, The Bank of California is larger than any other bank with banking offices in Oregon and is larger than any Washington-based bank except Seattle-First National Bank.[1] The combined deposits of The Bank of California's two Washington offices alone, as of June 30, 1972, exceeded the total deposits of any Washington state bank and ranked seventh among all of the banks conducting a banking business in Washington.[2] The Bank of California unquestionably has the resources to take advantage of the Court of Appeals decision and expand its tri-state network of branches.

If in these proceedings The Bank of California had limited the scope of activity of its proposed new branch in Washington and the court had found such level of activity to be "insignificant," and if the court in its decision had

1. The Bank of California's total deposits as of June 30, 1974 were approximately $2.4 billion compared to total deposits of approximately $3.1 billion for Seattle-First National Bank, and approximately $2 billion of deposits for National Bank of Commerce, the second largest bank headquartered in Washington. The two largest banks headquartered in Oregon are First National Bank of Oregon and United States National Bank of Oregon, both of which had approximately $2.1 billion of deposits on June 30, 1974. *The American Banker*, July 31, 1974, at 146.

2. *United States v. Marine Bancorporation, Inc.*, No. 73-38 (June 26, 1974), ... U.S. ..., 42 U.S.L.W. 5210, 5022 (appendix to the opinion).

prohibited any further branching by The Bank of California other than in the State of California, then an argument against a writ of certiorari based on limited significance might be well founded. But no such limitation has been made either by The Bank of California or by the Court of Appeals. On the record as it exists, The Bank of California is free to effect further disruption of the banking systems of Washington and Oregon. The decision has grave significance for the banking systems of both states.

2. Bank Holding Companies Do Not Enjoy the Right to Branch Across State Lines

The Bank of California asserts that multi-bank holding companies enjoy similar "grandfather" rights and that Congress "in effect" recognized interestate bank operations when it enacted the Bank Holding Company Act of 1956 (12 USC §§1841-1850) (Brief of The Bank of California, p. 6). This reliance on the Bank Holding Company Act is misplaced. Although a bank holding company subsidiary may branch within the state in which its head office is located pursuant to 12 USC §36(c), the Bank Holding Company Act does not preserve or grant any rights to such banks to branch across state lines. Further, Congress carefully limited the right of holding companies to acquire banks located outside of the state of its principal banking operations. Section 3(d) of the Bank Holding Company Act (12 USC §1842(d)) prohibits an out-of-state bank acquisition by a bank holding company unless the statutes of the state in which the bank is located expressly authorize the acquisition. Section 3(d) evidences congressional intent to limit and regulate rather than expand interstate banking activities.

3. Respondent Cannot Expand in Washington by Acquiring a Competing Bank

On page 7 of its Brief, The Bank of California states that Petitioners have argued that respondent can expand in Washington only by acquiring a competing bank and that this "anti-competitive" argument was rejected by the Court of Appeals. Petitioners' position, clearly stated throughout this proceeding, is that The Bank of California, under 12 USC §36(d), cannot expand in Washington either on a *de novo* basis or by acquiring an existing bank. This position is based on the clear meaning of 12 USC §36(c) and not on an anti-trust theory. The recently decided case of *United States v. Marine Bancorporation, Inc.*, No. 73-38 (June 26, 1974), ... U.S. ....., 42 U.S.L.W. 5210, was an anti-trust case which lends no support to The Bank of California's argument. That case is pertinent, however, because of its discussion of the Washington branching laws and the recognition by this Court of the stringent Washington requirements for *de novo* branching (42 U.S.L.W. at 5212). The Court of Appeals decision ignores these requirements.

CONCLUSION

For the reasons stated in the Petition for a Writ of Certiorari and this Reply Brief, Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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